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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

8 SAMUEL RYAN,

9 Petitioner,

10 v.

11 MAGGIE MILLER-STOUT,

12 Respondent.

Case No. C12-727 JCC-BAT

**REPORT AND  
RECOMMENDATION**

13 The Court originally granted *pro se* petitioner Samuel Ryan’s unopposed motion to stay and  
14 abey his habeas petition because the federal action appeared to be a protective petition in the  
15 event a pending state personal restraint petition (“PRP”) was rejected for untimeliness or other  
16 procedural reasons. (Dkts. 11, 12.) Petitioner has since voluntarily dismissed his state PRP but  
17 moves to keep the federal petition stayed because he recently filed a motion to modify the  
18 underlying state criminal judgment, thereby rendering his federal petition unexhausted. (Dkt.  
19 17.) Respondent does not oppose staying this matter until all of the state-court litigation (which  
20 no longer includes a state PRP) is completely resolved. (Dkt. 18.)

21 The Court finds that the parties have demonstrated good cause for staying the present matter  
22 as a “protective” habeas petition in light of petitioner’s risk of running afoul of the federal, one-  
23 year statute of limitations. *See Pace v. DiGuglielmo*, 544 U.S. 408, 416 (2005). A real

1 possibility exists that a future habeas petition would be time-barred in federal court if, rather than  
2 staying this matter, the Court were to dismiss the current habeas petition. *See* 28 U.S.C.  
3 § 2244(d)(1)–(2).

4 The Court recommends **GRANTING** petitioner’s unopposed motion to stay and abey the  
5 proceedings until his pending state-court litigation is completely adjudicated. (Dkt. 17.) The  
6 Court also recommends: **(1)** directing **respondent** and **petitioner** each to file a status report with  
7 Magistrate Judge Brian A. Tsuchida every ninety (90) days, beginning ninety (90) days from the  
8 date of the order adopting this Report and Recommendation; **(2)** directing **petitioner** to send to  
9 respondent and to the Court a copy of the mandate for his pending Criminal Rule 7.8 motion  
10 within fourteen (14) days of receiving it; and **(3)** striking the earlier status-report deadlines, and  
11 providing that respondent need not file an Answer to the federal habeas petition until forty-five  
12 (45) days after the stay of proceedings is lifted.

13 As respondent does not oppose petitioner’s motion, the Court recommends if this  
14 recommendation is adopted, that it be approved immediately. A proposed order accompanies  
15 this Report and Recommendation.

16 DATED this 27th day of June, 2012 .

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20 BRIAN A. TSUCHIDA  
21 United States Magistrate Judge  
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